

The State of New Hampshire

## Department of Environmental Services

Michael P. Nolin  
Commissioner



November 2, 2004

Joe Romano  
20 Canal Street  
Franklin, NH 03235

### **NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-074**

**RE: FRANKLIN, FRANKLIN BUSINESS CENTER, EXISTING UNDERGROUND STORAGE  
TANK FACILITY (UST #A-0115227) (DES #199608021)**

Dear Mr. Romano:

The New Hampshire Department of Environmental Services ("DES") is hereby notifying you that the above-referenced facility, located at 20 Canal Street, Franklin, NH is not in compliance with New Hampshire Code of Administrative Rules Env-Wm 1401, regulating Underground Storage Facilities. On June 3, 2004 a DES inspector conducted a compliance audit at the facility. A written document, describing the deficiencies was provided to the facility representative. This document required the facility be returned to compliance within 45 days, and DES be notified of the corrective measures taken. Compliance has not been achieved. **Failure to achieve compliance with the following deficiencies within 90 days from the date of this Notice of Non-Compliance and Permit Revocation ("Notice") will result in revocation of your Permit-to-Operate on January 31, 2005. This letter contains important compliance and procedural information. Please read it carefully. Also, note that due to the non-compliance status of your facility a Proposed Administrative Fine will be issued under separate cover.**

1. Env-Wm 1401.04 Registration

Env Wm 1401.04 requires a registration form to be on file at DES for all regulated UST systems. A review of DES records indicates that a current registration form for the UST system is not on file. A registration form shall be provided for all unregistered UST systems.

2. Env-Wm 1401.11 Inventory Monitoring

Env-Wm 1401.11 requires inventory monitoring be conducted and inventory records be maintained on motor fuel, hazardous substance and bulk heating oil systems without secondary containment and leak monitoring for both tank and piping. DES has determined that inventory records for the 20,000-gallon #2 fuel oil UST was not available during the inspection. Inventory monitoring or tightness test results for the UST shall be provided to DES.

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-074

November 2, 2004

Page 2 of 4

3. Env-Wm 1401.25 Spill Containment and Overfill Protection

Env-Wm 1401.25 requires overfill protection devices be installed and maintained in good working order on all UST systems. DES has determined that the overfill protection device was not maintained in good working order. The audible alarm for the overfill protection device shall be repaired. Verification that the audible alarm for the overfill protection device has been repaired shall be provided to DES.

In addition, Env-Wm 1401.10(a) requires owners of underground storage facilities for oil to maintain financial responsibility for costs associated with cleanup of releases from systems, the implementation of corrective measures, and compensation for third party damages in the amount equal to or greater than \$1,000,000 per occurrence. Env-Wm 1401.10(c) provides that the financial responsibility requirement may be satisfied if the owner is eligible for reimbursement of costs associated with cleanup of releases from the Oil Discharge and Disposal Cleanup Fund ("the Fund"). Eligibility for the Fund is contingent upon achieving and maintaining compliance with statutory (RSA 146-C) and regulatory (Env-Wm 1401) requirement. This facility has not achieved compliance, consequently, the Fund is not available to you as a financial responsibility mechanism.

In accordance with RSA 146-C:4 and Env-Wm 1401.07(a), no person shall own or operate an underground storage facility without a permit issued by DES. Within 30 days from the date of the permit revocation the facility shall be closed in accordance with Env-Wm 1401.18 for permanent closure.

Based on the compliance deficiencies described above, DES believes this facility poses a potential substantial threat to the surface and groundwater of the state. Therefore, in accordance with RSA 146-C:4 and Env-Wm 1401.09, if compliance as requested above is not achieved within ninety (90) days of the date of this Notice your Permit-to-Operate (UST Permit #0115227) shall be revoked effective **January 31, 2005**. Within thirty (30) days of the date of permit revocation all regulated substances must be removed from the UST systems at this facility. If the facility achieves compliance during the ninety (90) day period, it is necessary that documentation be submitted to DES verifying that compliance has been attained.

You have the right to a hearing to contest these allegations before the proposed license action is taken. The hearing would be a formal adjudicative proceeding pursuant to RSA 541-A:31, at which you and any witnesses you may call would have the opportunity to present testimony and evidence as to why the proposed action should not be taken. All testimony at the hearing would be under oath and would be subject to cross-examination. If you wish to have a hearing, one will be scheduled promptly.

RSA 541-A:31 III(e) provides that you have the right to have an attorney present to represent yourself at your own expense. If the Permit is an occupational license, under RSA 541-A:31, III(f) you have the right to request DES to provide a certified shorthand court reporter at your own expense. **Such request must be submitted in writing at least 10 days prior to the proceeding.**

NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-074

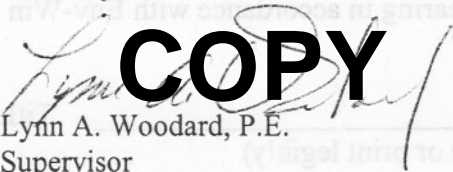
November 2, 2004

Page 3 of 4

You may waive your right to a hearing. If you waive the hearing, DES is prepared to proceed with the actions as stated above. You should notify DES of your decision by filling out and returning the enclosed form.

If there are any questions concerning the above, I may be contacted at the Waste Management Division at (603) 271-1165.

Sincerely,

  
Lynn A. Woodard, P.E.

Supervisor

Oil Compliance and Initial Response Section

CERTIFIED MAIL # 7000 1670 0000 0584 4400

cc: Michael P. Nolin, Commissioner  
Gretchen R. Hamel, DES Legal Unit /  
Fred McGarry, P.E., Chief Engineer, WMD  
George Lombardo, P.E., WMD  
Tom Beaulieu, WMD  
Mark Antonia, WMD  
Health Officer, City of Franklin



NOTICE OF NON-COMPLIANCE and PERMIT REVOCATION – NCPR # 04-074

November 2, 2004

Page 4 of 4

\*\*\* RETURN THIS PAGE ONLY \*\*\*

APPEARANCE

\_\_\_\_ I desire a hearing in accordance with Env-Wm 1401 regarding the Permit.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(Please type or print legibly) (Please type or print legibly)

Signature \_\_\_\_\_ Date: \_\_\_\_\_

WAIVER OF HEARING

\_\_\_\_ I certify that I understand my right to a hearing regarding the revocation of the Permit and that I hereby waive those rights.

Name: \_\_\_\_\_ Title: \_\_\_\_\_  
(Please type or print legibly) (Please type or print legibly)

Signature \_\_\_\_\_ Date: \_\_\_\_\_

Please return to:

Department of Environmental Services Legal Unit  
Attn: Michael Sclafani, Legal Assistant  
PO Box 95  
Concord, NH 03302-0095